

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

	x	
UNITED STATES OF AMERICA,	:	Criminal Action
	:	
Plaintiff,	:	No. 2:21-cr-00127
	:	
v.	:	
	:	
RAYMOND DUGAN,	:	*** REDACTED ***
	:	
Defendant.	:	APPEAL TRANSCRIPT
	x	

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE JOSEPH R. GOODWIN
UNITED STATES DISTRICT COURT JUDGE
IN CHARLESTON, WEST VIRGINIA
OCTOBER 27, 2022

APPEARANCES:

For the Government: Julie White, Esq.
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Proceedings recorded by mechanical stenography; transcript
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1 PROCEEDINGS had before The Honorable Joseph R.
2 Goodwin, Judge, United States District Court, Southern
3 District of West Virginia, in Charleston, West Virginia, on
4 October 27, 2022, at 10:00 a.m., as follows:

5 THE COURT: Good morning.

6 THE COURTROOM DEPUTY CLERK: The matter before the
7 Court is *The United States of America v. Raymond Dugan*,
8 Criminal Action No. 2:21-cr-127.

9 THE COURT: Is the United States ready?

10 MS. WHITE: Yes, Your Honor.

11 THE COURT: Is the defendant ready?

12 MR. SCHLES: Yes, Your Honor.

13 THE COURT: Will the defendant and defense counsel
14 please stand.

15 Madam Clerk, would you administer the oath to
16 Mr. Dugan.

17 **RAYMOND DUGAN, DEFENDANT, SWORN**

18 THE COURT: Mr. Dugan, on August 2nd, 2022, you
19 were convicted of accessing with the intent to view child
20 pornography in violation of 18 United States Code Sections
21 2252A(a)(5)(B) and (b)(2) as charged in a single-count
22 superseding indictment returned against you by the grand
23 jury.

24 Since the time of your conviction the probation
25 department has conducted a presentence investigation of you

1 and prepared a presentence investigation report.

2 Have you had an opportunity to read that report and
3 discuss it with your lawyer?

4 THE DEFENDANT: Yes, Your Honor, I have.

5 THE COURT: Mr. Schles, have you had an
6 opportunity to read it and discuss it with your client?

7 MR. SCHLES: I have, Your Honor.

8 THE COURT: Having done so is there any reason why
9 disposition should not take place today?

10 MR. SCHLES: No, Your Honor.

11 I would bring to the Court's attention that the
12 government and the defense have agreed to ask the Court to
13 defer final decision on the restitution judgment.

14 The agreement is that I was just on Tuesday provided
15 with documentation which is kind of lengthy and complicated.

16 In the interim, Your Honor, Mr. Dugan will deposit with
17 the clerk -- or with the Court the sum --

18 What is it?

19 MS. WHITE: 22,000.

20 MR. SCHLES: -- \$22,000, which would represent the
21 special assessment, restitution and the individual claim of
22 restitution. If there were to be some adjustment, any
23 balance would be refunded. Otherwise, that money would be
24 turned in for the restitution, Your Honor.

25 THE COURT: So insofar as the Court's concerned

1 I'll defer any determination with regard to the matter of
2 restitution to a later date. And I believe that is
3 permitted. Otherwise, I'll proceed with sentencing today.

4 Is that agreed?

5 MR. SCHLES: That is, Your Honor.

6 MS. WHITE: Yes, Your Honor.

7 Thank you.

8 THE COURT: All right. Mr. Dugan, do you
9 understand the contents of that presentence investigation
10 report?

11 THE DEFENDANT: Yes, Your Honor, I do.

12 THE COURT: Having reviewed it it appears that the
13 government has no objections, the defendant has four. I'll
14 deal with the ones I still need to deal with one at a time.

15 The defendant objects to paragraph 96, which includes
16 as a condition of the supervised release that the defendant
17 not view or possess any visual depiction of sexually
18 explicit conduct for the purpose of sexual gratification.

19 Defendant argues that requiring him to refrain from all
20 sexually explicit material is overbroad.

21 Anything further argument from either party?

22 MR. SCHLES: No, Your Honor.

23 I've set forth in the sentencing memorandum the basis
24 for the objection and also some language that has been used
25 in other cases by courts in recognition of the overbreadth

1 that I believe is reasonable and I ask the Court to adopt
2 that as a condition.

3 THE COURT: Say again.

4 Say that again.

5 MR. SCHLES: Your Honor, the argument is
6 essentially that the condition is overbroad because as
7 written and defined in the code it includes, you know,
8 things that are in the mainstream media. And in the
9 sentencing memorandum I had quoted language that has been
10 used in the past for -- to cover that condition that makes
11 it clear that it is meant to be limited to things that do
12 not include simulated sexual contact between adults as you
13 would see in the mainstream media.

14 THE COURT: I'll hear from the government.

15 MS. WHITE: Your Honor, I believe that condition
16 96 is set forth in order to make sure that the defendant
17 doesn't maintain materials that would interfere with his sex
18 offender treatment. And so to that extent we believe that
19 the condition is reasonable and we would add that in
20 response to what's provided on page 28 of the PSR as the
21 office of probation's response.

22 Thank you.

23 THE COURT: The statute defines sexually explicit
24 conduct to include actual or simulated sexual conduct.
25 Prohibiting the defendant from accessing even simulated

1 sexually explicit conduct deprives Mr. Dugan of more liberty
2 than is reasonably necessary in my opinion.

3 I hold that the scope of the condition should not be
4 that broad; that is, it should not include simulated conduct
5 between adults, which is often found in mainstream films and
6 television.

7 The condition will be modified to read as follows:

8 Except as otherwise provided in this paragraph, the
9 defendant must not view or possess any visual depiction,
10 including any photograph, film, video, picture or
11 computer -- or computer-generated image or picture whether
12 made or produced by electronic, mechanical or other means of
13 sexually explicit conduct for the purpose of sexual
14 gratification and would comprise any sex offense specific
15 treatments. As applied to the defendant the term sexually
16 explicit conduct shall not include adult simulated sexually
17 explicit conduct.

18 Objection number two, the defendant objects to the
19 conditions in paragraphs 99 and 111 regarding the
20 consumption of alcohol.

21 Anything further on that?

22 MR. SCHLES: No, Your Honor, other than while
23 Mr. Dugan admittedly has had a period of time where he was
24 abusing alcohol by his own admission, I don't believe a
25 total prohibition of alcohol for what will be obviously a

1 very lengthy term of supervised release is necessary.

2 I would not have any objection, Mr. Dugan would not
3 have any objection, that he shall refrain from excessive
4 consumption of alcohol or becoming intoxicated, but as
5 written now it would be like a champaign toast at a wedding
6 or things like that.

7 I think that goes further than is necessary to both
8 protect the public and to ensure that Mr. Dugan does not
9 abuse alcohol or have any alcohol use contribute to his
10 treatment.

11 THE COURT: Anything from the government?

12 MS. WHITE: No, Your Honor.

13 Thank you.

14 THE COURT: I find that requiring the defendant to
15 refrain from alcohol as a condition of supervised release is
16 reasonable during that period.

17 Supervised release conditions are a part of the
18 restrictions and punishment imposed as a result of the
19 criminal conviction.

20 Mr. Dugan has identified a mental health diagnosis of

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED].

25 After his mother became ill, Mr. Dugan began drinking

1 heavily for two or three months. Because of his struggles
2 with mental health and heavy drinking under prior stressful
3 situations, I find that the conditions recommended in
4 paragraphs 99 and 111 are reasonable.

5 As counsel is well aware, conditions of supervised
6 release are always subject to change or amendment upon
7 petition to the Court during the period of supervision.

8 The defendant objects to the imposition of the \$5,000
9 special assessment.

10 Anything further on that?

11 MR. SCHLES: No, Your Honor.

12 THE COURT: Anything from the government?

13 MS. WHITE: Your Honor, we would simply note that
14 while the defense argues in its brief that the defendant and
15 his wife are soon to be divorced, in the packet of materials
16 provided by the defense there is a letter from the wife
17 indicating that she knows and loves her husband and that
18 they're best friends.

19 There's no indication of any pending divorce in those
20 materials, so we would ask the Court not to take that into
21 consideration.

22 The defendant retained private counsel and his finances
23 are indicative of having the resources to pay that
24 assessment.

25 Thank you, Your Honor.

1 MR. SCHLES: Your Honor, in terms of the status of
2 Mr. Dugan and his wife's marriage, I think many
3 relationships are complex. You can love someone and be in
4 love with somebody and seek a divorce. She is seeking a
5 divorce. She has filed for a divorce. It's pending at this
6 time.

7 As you know, Mr. Dugan obviously is incarcerated. The
8 Logan County's, I guess, family court has appointed a
9 guardian ad litem at this time.

10 There has been no resolution in terms of a property
11 settlement or divorce, but the divorce is still there.

12 My understanding was that that -- in addition to the
13 \$17,000 of individual restitution, that we were just going
14 to hold that in abeyance for up to 90 days to see if we can
15 come to an agreement on that or just have the Court
16 determine that as coming.

17 I will agree, Your Honor, that --

18 THE COURT: You don't think --

19 MR. SCHLES: -- as we speak my client is not
20 indigent on paper. His assets exceed his liabilities.

21 THE COURT: Don't you believe the statute requires
22 me to impose a \$5,000 special assessment?

23 MR. SCHLES: I'm sorry, Your Honor?

24 THE COURT: Doesn't the statute require me to
25 impose a \$5,000 special assessment?

1 MR. SCHLES: The only exception is indigency is my
2 understanding, Your Honor. And as I say he -- on paper as
3 we speak he is not indigent. It is more looking forward
4 prospectively. I understand the Court's position.

5 THE COURT: All right. I overrule the objection.

6 Finally the objections are to restitution, which we're
7 going to deal with later.

8 Let me say this about some of the issues that maybe
9 you'll be dealing with on restitution. I received a stack
10 of letters, statements and so forth about that thick four
11 days ago. I assume defense counsel didn't receive them any
12 earlier.

13 I don't want to embarrass the Assistant United States
14 Attorney, but I doubt that if I ask you you could pull out
15 the exact letter from the exact person for each of the cases
16 here, could you?

17 MS. WHITE: Most respectfully I do have them here,
18 but we have no objection to handling restitution --

19 THE COURT: You have them all?

20 MS. WHITE: Yes, sir.

21 THE COURT: I understand, but do you have the ones
22 that just relate to the people that have made claims?

23 MS. WHITE: I have those as well as the --

24 THE COURT: Can you give me the one that's for --
25 give me a name.

1 Jenny. Do you have Jenny's handy?

2 MS. WHITE: I'm not sure handy would be the word
3 that I would use, Your Honor. I do have the stack here.

4 THE COURT: Yeah, I have the stack as well.
5 That's the problem. It's, you know, hundreds of pages of
6 things. And if we're going to deal with this appropriately,
7 just handing somebody that package without more doesn't
8 really inform anything.

9 MS. WHITE: Yes, Your Honor.

10 THE COURT: It took my law clerk a long time to
11 find me the ones I needed to see.

12 MS. WHITE: Yes, Your Honor.

13 THE COURT: So I suspect -- I just suspected that
14 these kinds of things come in bulk --

15 MS. WHITE: Uh-huh.

16 THE COURT: -- to the probation office at the
17 instance of some bureaucratic mechanism within the
18 Department of Justice; is that fair?

19 MS. WHITE: Yes, it goes through a series of
20 people and it ultimately ends up in the probation office for
21 further dissemination. We're grateful for their assistance.

22 I spoke to Mr. Schles before court. We do agree that
23 the statute allows 90 days. That's a reasonable request.
24 And because he's further agreed to put the money at issue in
25 a trust with the Court, we have no objections to spending a

1 little more time on that issue separate from today's
2 sentencing.

3 THE COURT: Okay. Well, the whole system is a bit
4 bizarre -- the statutory scheme.

5 The victim's trust fund with more accountability of
6 what happens to these monies and the receipt of them and how
7 they're dispersed and so forth would seem to me to be more
8 in the interest of justice, but then again I have no
9 interest in running for Congress.

10 MS. WHITE: That may be above my pay grade, Your
11 Honor, but I don't disagree with you that the system could
12 use some improvements.

13 THE COURT: For example, you only have like three
14 or four people who have requested restitution. The amounts
15 are just round amounts with no -- the standard being
16 preponderance of the evidence as to what the damages are.
17 We don't have an affidavit. We don't have any statement of
18 what the damage is. We don't have anything. And that's
19 true every time it comes up here.

20 MS. WHITE: Uh-huh.

21 THE COURT: It just so happens that Mr. Schles is
22 the first person that's objected. I've wondered about it
23 for a couple of decades, but --

24 MS. WHITE: Well --

25 THE COURT: -- in any event I am certain given the

1 quality of the lawyers on both sides that you will work it
2 out and let me know at a hearing to be set by the courtroom
3 deputy clerk probably after consultation with you fine
4 lawyers.

5 Okay. Any additional objections to the presentence
6 report?

7 MR. SCHLES: The only other objection was simply
8 to the boilerplate paragraphs stating that the probation
9 officer found no grounds for a variance, Your Honor, but
10 that -- we are asking for a variance obviously.

11 THE COURT: Well, she didn't find any, which I'll
12 take her at her word that she didn't find any.

13 That doesn't prohibit you from arguing for a variance
14 and the United States Attorney opposing it and me doing
15 whatever I think's in the interest of justice, right?

16 MR. SCHLES: Correct, Your Honor.

17 THE COURT: Okay. Mr. Dugan, do you have any
18 objections to any of the facts contained in the presentence
19 report not previously addressed?

20 THE DEFENDANT: Please repeat the question.

21 THE COURT: Do you have any additional objections
22 to the facts contained in the presentence report not
23 previously addressed?

24 THE DEFENDANT: No, sir, I do not.

25 THE COURT: Are you completely satisfied with the

1 legal representation you've been provided from the beginning
2 of that representation through today?

3 THE DEFENDANT: Yes.

4 THE COURT: I find sufficient indicia of
5 reliability to support the probable accuracy of the matters
6 contained in the presentence report and the addendum
7 thereto.

8 I adopt the presentence report and the addendum except
9 as otherwise noted.

10 I direct the probation office to file a copy of the
11 presentence report in the court file under seal.

12 The defendant stands convicted of accessing with the
13 intent to view child pornography.

14 Federal law provides the following maximum penalties:

15 A term of imprisonment of 20 years, a period of
16 supervised release of life, a fine of \$250,000, restitution,
17 a mandatory special assessment of \$100, an additional
18 special assessment of \$5,000.

19 The United States sentencing guidelines are advisory
20 and are not binding on the Court. I may not presume the
21 guidelines to be reasonable. Nevertheless, I am required to
22 carefully calculate and consider the guidelines when
23 arriving at a just sentence.

24 I'll do that now.

25 The relevant U.S. sentencing guideline in this case is

1 found in 2G2.2. That provides for a base offense level of
2 18.

3 Section 2G2.2(b)(2) provides for a two-level increase
4 if the material involved a prepubescent minor or a minor who
5 had not attained the age of 12 years. Here the defendant
6 possessed material involving children under the age of 12;
7 therefore, a two-level increase is applied. That increases
8 the offense level to 20.

9 Section 2G2.2(b)(4)(A) provides for a four-level
10 increase if the offense involved material that portrays
11 sadistic or masochistic conduct or other depictions of
12 violence. Here the defendant did possess material involving
13 sadistic or masochistic conduct or other depictions of
14 violence as reflected in the file names located on his
15 computer. A four-level increase is applied. That increases
16 the offense level to 24.

17 Section 2G2.2(b)(6) provides for a two-level increase
18 if the offense involved the use of a computer, et cetera.
19 That increases the offense level to 26.

20 I'm well aware of the perfectly legitimate objections
21 to that enhancement and will consider when I impose my
22 sentence. Nevertheless, I am required to calculate the
23 guidelines as they're written, so that increases the offense
24 level to 26.

25 2G2.2(b)(7)(D) provides for a five-level increase if

1 the offense involves 600 or more images. Here over a
2 thousand images of child pornography were recovered from the
3 defendant's hard drive; therefore, a five level increase is
4 applied. That increases the offense level to 31.

5 Again, I'm aware of the circumstance that makes the
6 number of images problematic and somewhat irrelevant in
7 light of modern technology.

8 Moreover, I have a policy disagreement with the
9 Sentencing Commission with regard to tying the length of
10 punishment to the numbers of images, the amount of drugs,
11 the amounts of money, and all of those formulaic processes.
12 I honestly have never been able to wrap my head around why
13 having 599 images is less culpable than having 600 images or
14 700 for that matter.

15 I find for proper calculation the offense level is 31.

16 The defendant has no criminal history. That
17 establishes a criminal history category of one.

18 Given a total offense level of 31 and a criminal
19 history category of one, the advisory guideline range is as
20 follows:

21 A term of imprisonment of 108 to 135 months, a period
22 of supervised release of five years to life, a fine of up to
23 \$250,000, restitution, and a special assessment of \$100,
24 plus the additional special assessment of \$5,000.

25 Mr. Schles, anything you or Mr. Dugan would like to

1 proffer with respect to these calculations not previously
2 addressed?

3 MR. SCHLES: Not with respect to the calculations,
4 Your Honor.

5 THE COURT: Ms. White, anything concerning the
6 calculations?

7 MS. WHITE: No, sir.

8 THE COURT: Section 3553(a) of Title 18 provides
9 several additional factors that the Court must consider when
10 arriving at a just sentence. The parties have, in their
11 sentencing memorandum, addressed the 3553(a) factors at the
12 direction of the Court.

13 Does either party want to offer additional information
14 on the 3553(a) factors recognizing I will also give you an
15 opportunity to speak before I impose sentence.

16 Mr. Schles, anything on the 3553(a) factors not
17 addressed in your memorandum?

18 MR. SCHLES: Yes, Your Honor.

19 I would -- I don't want to belabor the statistics and
20 the arguments as set forth in the written sentencing memo
21 that has been submitted. I know this Court is aware and
22 understands the issues that have been raised.

23 What I would like to do is point your attention to a
24 case you're well familiar with because you authored it:
25 *United States v. Cruikshank*, 667 F.Supp. 697, 2009 decision

1 of this Court.

2 And what I'd like to do is simply draw parallels
3 between the situation or position of Mr. Cruikshank and that
4 of Mr. Dugan for the Court's consideration.

5 In both cases the base offense level was 18 for each
6 individual. Each received the two-level enhancement under
7 2G2.2(b)(2). Each --

8 THE COURT: I've reviewed that decision in
9 anticipation of this hearing, but go ahead and make your
10 record.

11 MR. SCHLES: And also received two levels for
12 2G2.2(b)(6) for use of a computer. On the (b)(7), for the
13 number of images, Mr. Cruikshank received plus four;
14 Mr. Dugan receives plus five.

15 Prior to adjustment under chapter three,
16 Mr. Cruikshank's total guidelines were 26; Mr. Dugan's is
17 31. Mr. Cruikshank was a guilty plea case. He received
18 three levels off for acceptance of responsibility.

19 I fully understand this Court, in calculating the
20 guidelines, cannot grant a three-level reduction for
21 acceptance of responsibility, but I know this Court, because
22 you've done it to me, has expressed in *United States v.*
23 *Walker* and in other cases a preference for public jury
24 trials so that the public is aware of what's going on and
25 the transparency.

1 And I just would submit, Your Honor, that when somebody
2 does elect to exercise their constitutional right to a trial
3 semantically maybe acceptance of responsibility being denied
4 is not a punishment, but if it results in a higher
5 sentencing range it has the same effect and I would ask the
6 Court to take that into consideration as well.

7 The largest difference between the two individuals,
8 Mr. Cruikshank and Mr. Dugan, is that Mr. Cruikshank did not
9 receive the four-level enhancement under (b) (4) (A) of 2G2.2.

10 These are mouthfuls, Your Honor.

11 THE COURT: It's all right.

12 MR. SCHLES: And if you look at it from that
13 standpoint, four levels up from -- Mr. Cruikshank ultimately
14 received a sentence from this Court of level -- of -- excuse
15 me -- of 24 months, which represents the top end of level 15
16 for a criminal history category one defendant.

17 If we were to adjust that here, level 19 and criminal
18 history category is 30 to 37 months, which is the basis for
19 our request for a sentence of 36 months, Your Honor.

20 THE COURT: I think you've made an eloquent
21 argument based on something I decided in a completely
22 separate case, but in listening to it -- and I mean no
23 offense -- I can't help but think it also demonstrates the
24 problem with a formulaic approach to sentencing that does
25 not carefully consider the individual characteristics of

1 each defendant and the circumstances surrounding each crime.

2 So I take your point and it's well made.

3 MR. SCHLES: Well, may I continue, Your Honor?

4 THE COURT: Sure.

5 MR. SCHLES: In determining -- looking at the
6 nature and circumstances of the offense, Mr. Cruikshank paid
7 for access to an online website. He paid for one month at
8 49.95; on one occasion \$94.95 for an unspecified amount in
9 the case anyway. And it also mentioned that he also
10 accessed free images on the internet.

11 Mr. Dugan did not subscribe to any service or pay
12 anything, but he used the dark website to access in a
13 somewhat similar manner to what Mr. Cruikshank did.

14 THE COURT: Over a more extended period of time as
15 well.

16 MR. SCHLES: I'm sorry, Your Honor?

17 THE COURT: Over a more extended period of time as
18 well.

19 MR. SCHLES: I think it was fairly close in the
20 period of time, Your Honor.

21 THE COURT: I'm not sure of that. I just read it
22 yesterday, but you tell me and I'll stand corrected.

23 MR. SCHLES: Also, similarly, Your Honor, neither
24 Mr. Cruikshank or Mr. Dugan downloaded and saved the images.
25 In both cases they viewed them on a website and because of

1 the operating systems and technical mechanisms built into
2 the way the systems operated, the images were found in
3 temporary files. Neither one of them demonstrated the
4 characteristics of collectors who organize and catalogue and
5 take extreme measures. Neither one of them had any images
6 except on one device. Both of them owned multiple devices,
7 all of which were searched. The images were only found in
8 the temporary files on one device in each case.

9 In terms of the history and characteristics of the
10 defendants, Your Honor, neither one had any criminal
11 history. My client has zero criminal history. He had one
12 traffic citation that was dismissed. And he's in his
13 mid-50s, Your Honor. It doesn't get much more spotless than
14 that.

15 Both gentlemen are married with children -- or a child
16 in my client's case.

17 Both Mr. Cruikshank and Mr. Dugan have a history of
18 being hard working and gainfully employed successful
19 individuals. Both of them lost their job as a result of
20 their convictions. Both of them have the support of their
21 families.

22 And in neither case -- and I think this is key. In
23 neither case was there a hint that either one of them had
24 ever even contemplated any kind of physical contact or abuse
25 with a child and that their criminal conduct was, in fact,

1 limited to sitting in their house and looking at these
2 images.

3 This Court has recognized that this is a serious
4 offense and we do not question that.

5 The Court has recognized and many courts have that if
6 it were not for demand there wouldn't be production. That
7 goes for, I guess, all drug crimes, these types of crimes,
8 anything that involves consumption. But, again, no evidence
9 in either case that they have ever had any, any, any contact
10 with children that were inappropriate.

11 In terms of deterrence, this Court found that 24 months
12 was an adequate sentence to deter others.

13 In this case 36 months is obviously more than
14 24 months. So that if 24 months was adequate to deter
15 others in Mr. Cruikshank's case, I believe 36 months serves
16 the same purpose here.

17 In terms of protecting the public, this Court has
18 recognized the social stigma attached to this offense, the
19 loss of prestige and reputation in one's community. Again,
20 he lost his job. Mr. Dugan, I think the thing he feels
21 worst about is what he's put his family through, the
22 tremendous suffering for his wife and his child and his
23 other family members who are close to him.

24 I believe that both Mr. Dugan and Mr. Cruikshank
25 represent offenders in the lowest category in terms of

1 likelihood to be recidivists.

2 I would also point out that Mr. Dugan undoubtedly is
3 going to be on supervised release for a very long period of
4 time. I expect this Court will impose as conditions of
5 supervised release that he receive sex offender treatment
6 from a licensed and approved provider and that can be
7 ongoing and long term. He will be closely supervised by the
8 Department of Probation.

9 And given his otherwise spotless criminal record, Your
10 Honor, I think the need to protect the public can be
11 adequately protected with a 36-month sentence.

12 And in terms of providing any needed correctional
13 treatment or substance abuse or mental health treatment,
14 that can be done better while he is in the community from a
15 licensed professional than can be done during his period of
16 incarceration, although we expect that he will be having
17 that during that too.

18 And in terms of the kinds of sentences available, both
19 Mr. Cruikshank and Mr. Dugan are class C felons, probation
20 eligible, but as you found in Cruikshank probation would not
21 require or allow for sufficient deterrence to others, Your
22 Honor, and I think that factor would also apply here.

23 And, again, just finally, Your Honor, I think that your
24 decision in Cruikshank was a very reasonable look at the big
25 picture of you do the numbers; they come out where they do.

1 Again, I wrote a 15-page memo or whatever about that,
2 so I'm not going to go into, but I would ask you to find
3 that a sentence of 36 months is sufficient but not greater
4 than necessary to fulfill the purposes of 3553(a)(2).

5 THE COURT: Anything further on the 3553(a)
6 factors?

7 MS. WHITE: I don't need to address anything on
8 the factors beyond what I briefed, but I would like an
9 opportunity to argue at the appropriate time.

10 THE COURT: You certainly will.

11 MS. WHITE: Thank you.

12 THE COURT: That's where we are right now.

13 Anything that the government would like to say before I
14 impose sentence?

15 MS. WHITE: Thank you, Your Honor.

16 I heard Mr. Schles's arguments. I've read his
17 responses. It is true that the defendant lost his job at
18 the time that he was incarcerated because he's unable to go
19 to work. That is a fact.

20 I do understand that he has family support, but what
21 Mr. Schles is arguing is that in another case in another day
22 with another defendant he received a certain sentence. And
23 so it follows directly from that in his logic that this
24 defendant, Mr. Dugan, should also receive a very specific
25 sentence based upon that other case on another day.

1 And while I respect the fact that we do need to have
2 sentences that on some level correlate or relate to one
3 another, I think that Mr. Dugan is a separate and distinct
4 individual.

5 He stands before you today convicted of accessing with
6 intent to view child pornography. I appreciate Mr. Schles's
7 attempts to downplay what that meant. That's the job he
8 does and he does a very good job at it, but let's be clear.
9 Mr. Dugan sought out the dark web, found specific websites
10 that required membership to access child abuse and sexual
11 exploitation material, and then looked at them over and over
12 and over again.

13 He told the officers in his statement that he continued
14 to look at them. And then he said this:

15 I decided to clean it up, so I deleted everything.

16 So when the defendant argues, well, I didn't have the
17 complex file structure and sorting mechanism of true people
18 who are into child pornography, that argument shouldn't hold
19 weight because we don't see those file structures that the
20 defendant argues don't exist. We don't see them because the
21 defendant deleted all of them.

22 So I would ask the Court not to give a lot of weight to
23 that argument because it's simply a factual distinction that
24 we have in this case.

25 I would also -- I would like to respond to Mr. Schles's

1 argument that there's no allegations that Mr. Dugan or
2 Mr. Cruikshank's, for that matter, touched any children.

3 I can't speak to the Cruikshank's case. I wasn't the
4 AUSA on that case. But I can tell you that that is the
5 epitome of a red herring. Let me come into court and tell
6 the judge all of the things that I didn't do that I was not
7 charged with to try to convince the judge to give me a break
8 at sentencing.

9 That's irrelevant. He's not charged with touching
10 children in this case and so I don't think the argument that
11 he didn't should in any way allow him to receive a less
12 significant sentence for what he did do and what he does
13 stand convicted of.

14 In addition, I understood in the pleadings that the
15 defendant had several family members very close to him who
16 became ill, ultimately succumbed to their illnesses. And I
17 think that many of us in this courtroom have been in that
18 situation of having family members to care for. It is
19 challenging. It is difficult. But we didn't turn to child
20 pornography to escape that pain.

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 [REDACTED].

2 Those numbers are stunning and they certainly address a
3 completely different public health crisis that we have. And
4 I don't want to take away from the pain that that causes a
5 family, but I do want to carefully and respectfully point
6 out that those family members didn't turn to child
7 pornography. And so while I respect the fact that the Dugan
8 family, like many other families in this courtroom, have had
9 significant challenges, that in no way justifies or explains
10 why he turned to child pornography.

11 One has nothing to do with the other. There's just no
12 study, there's no indication, there's no research that shows
13 a link between those two. And so we'd ask the Court to give
14 that the appropriate weight at this time.

15 We don't see -- the government doesn't see a reason for
16 a downward variance or departure in this case. Mr. Dugan
17 told the officers that he did it. He indicated that he was
18 curiosity -- that he was curious, that his curiosity got
19 him, that his life was over and his wife was gonna kill him.
20 He knew what he did was wrong. He tried to cover up his
21 tracks. And when he was unsuccessful to the extent that we
22 still found 1,237 images on his computer, that's what brings
23 him before you today for sentencing. And we'd ask that you
24 give him a sentence within the guideline range in this case.

25 Thank you.

1 THE COURT: Anything that counsel for the
2 defendant or the defendant would like to say before I impose
3 sentence?

4 MR. SCHLES: Yeah. I would like to briefly
5 respond to Ms. White, Your Honor.

6 I think Mr. Dugan's past conduct, in terms of
7 criminality, his lack of any evidence or any indication that
8 he had any interest in ever actually abusing a child is
9 highly relevant, Your Honor.

10 One of the main purposes under 3553(a) is to protect
11 the public. People can commit the crime and for other
12 reasons, characteristics, one person can present a greater
13 need to protect the public from that individual than from
14 another.

15 And I would submit that Mr. Dugan, the fact that he has
16 never done anything untoward towards any child in his
17 life -- and I'm sure the government looked for that -- is
18 certainly relevant to whether or not he presents a risk of
19 future danger. And the Court should fully consider that in
20 determining the need to protect the public and the length of
21 sentence that is appropriate.

22 Second, the Court will rely on its recollection as I'm
23 doing. I do not believe Mr. Dugan ever stated that he
24 deleted the images. I believe that he stated something
25 along the lines it got too scarey and he deleted the links

1 to the websites, not the images himself. There was no
2 evidence that he downloaded the images and then deleted
3 images from his hard drive, Your Honor.

4 But ultimately I think in terms of all of the 3553(a)
5 factors and looking at the whole picture of the need to
6 protect the public and the need to deter others being major
7 issues, obviously punishment is a part of the sentencing
8 scheme and justly so.

9 36 months in prison, Your Honor, is not a slap on the
10 wrist. To suggest that that's letting somebody off sending
11 someone to prison for three years at his age for his
12 situation -- or any age -- I shouldn't even say -- that
13 going to prison -- I'm just more used to younger clients,
14 Your Honor, but I find that just not realistic at all.

15 I believe a sentence of 36 months is adequate. And it
16 does take into account Mr. Dugan's conduct, his character,
17 and his specific actions in this case.

18 That's all, Your Honor.

19 THE COURT: Mr. Dugan.

20 THE DEFENDANT: Your Honor, I'd like to express
21 great sympathy and compassion for all the parties involved.
22 I would just ask that you look at my whole life from before
23 to where I'm at right now to where I'm going to, you know.

24 I've spent my whole life working for others, pouring my
25 life into them with less regard to myself and more regard to

1 them. I've -- there's things in my life that people don't
2 even know that, you know, I travel. I would give food away
3 to homeless people and hand out money and just try to do
4 good to anybody and everything and just -- I want you to be
5 able to see those things in me.

6 I'm a father who is just trying to keep his adult son
7 alive, just give him hope that there's something in this
8 world worth living for. My wife is -- is not -- her health
9 is not great. And I'm going to have to be able to -- no
10 matter what happens between us, I have responsibility to
11 take care of her even if I'm not with her.

12 This is -- those kind of responsibilities -- and I
13 don't have a whole lot of time left to be able to work and
14 earn and be able to rebuild my retirements. I poured most
15 of all my retirements into my parents taking care of their
16 lives. And they deserved every bit of it, but it was a long
17 sicknesses. My finances dwindled quite a bit. And I -- I
18 promise you that, you know, you'll see a person who's
19 already seeking to help others.

20 I spent three months in South Central. And every
21 person I've been housed with will tell you that I've spent
22 time even if it was something -- giving them a pack of
23 mustard just to make sure their lives were better for the
24 moment or helping them read their legal papers or just
25 counseling them on the Bible or things like that.

1 I've put everyone else ahead of me than myself with
2 one -- first time in my life I've had to ask people to put
3 me ahead of them for the moment. I didn't -- I -- I didn't
4 think it would be fair to ask people to help me. I asked my
5 wife and my son to write letters and I understand that
6 almost a dozen of them came in. I didn't ask these people
7 for anything, so I just ask you for mercy.

8 THE COURT: It's the judgment of the Court the
9 defendant be committed to the custody of the Federal Bureau
10 of Prisons to a term of 54 months.

11 Upon release from prison the defendant shall be placed
12 on supervised release for a term of five years.

13 Within 72 hours of release you shall report in person
14 to the probation office in the district to which you're
15 released.

16 While you're on supervised release you must not commit
17 another federal, state or local offense; you must not
18 possess any dangerous device or firearm; you must not
19 possess any unlawful controlled substance; and you must
20 comply with the standard terms and conditions of supervised
21 release as recommended by the Sentencing Commission and as
22 adopted by this Court, including the special condition that
23 you participate in a program of testing, treatment and
24 counseling for drug and alcohol abuse. That condition may
25 be modified upon motion.

1 The probation -- presentence report, rather, sets out
2 the standard conditions of supervised release as adopted by
3 this district and optional and special conditions that apply
4 specifically to your case.

5 Have you reviewed those conditions in the presentence
6 report?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you talked them over with your
9 lawyer?

10 THE DEFENDANT: Yes.

11 THE COURT: I have changed one of them based on an
12 objection by your lawyer.

13 THE DEFENDANT: Uh-huh.

14 THE COURT: Other than that one, I intend to adopt
15 all the ones in the presentence report.

16 Do you want me to read those to you or will you waive
17 reading?

18 THE DEFENDANT: I would waive it, Your Honor.

19 THE COURT: Very well.

20 I impose and you'll be subject to the conditions as set
21 out in the presentence report, including the standard
22 conditions adopted in this district except as previously
23 noted by the Court.

24 As we talked about earlier, the Court requires that the
25 government prove the amount of restitution by a

1 preponderance of the evidence. Of course, absolute
2 precision is not required when calculating restitution, but
3 you must establish the amount of the individual victims'
4 loss with reasonable certainty. See *U.S. v. Johnson*. It's
5 a Fourth Circuit case from 2017, 680 F. App'x 194.

6 You have made me aware of three requests for
7 restitution totaling \$17,000. I assume that's what you're
8 going to work on are those three requests; is that correct?

9 MS. WHITE: Yes, Your Honor.

10 THE COURT: I'll reserve ruling on the issue of
11 restitution pending a hearing.

12 Is there objection to the Court -- well, let me ask my
13 courtroom deputy.

14 Should we go ahead and enter the judgment order or do
15 we wait for the restitution?

16 THE COURTROOM DEPUTY CLERK: We go ahead and enter
17 the judgment order.

18 THE COURT: Is that acceptable?

19 MS. WHITE: Yes, Your Honor.

20 MR. SCHLES: Yes, Your Honor.

21 THE COURT: All right. I'll reserve ruling on the
22 restitution issues and have a separate hearing on that
23 matter on January 12th, 2023, at 2:30 p.m.

24 Submit a memo or an agreed statement by December 22nd.

25 If there isn't agreement, then the government should

1 have theirs in by the 22nd and the defendant by the 5th of
2 January, but I'm hoping you'll have an agreed statement.

3 I may, in fact, be able to dispose -- based on what you
4 submit, I may be able to dispose of the hearing. We'll see.

5 After considering an appropriate sentence, I've
6 reviewed both the victim impact statements, as I sorted
7 through them, and the letters of support that Mr. Dugan has
8 submitted to the Court.

9 After considering the advisory guidelines and the
10 factors from 3553(a), I find that the sentence of 54 months,
11 followed by five years' supervised release, is reasonable
12 and appropriate for a number of reasons.

13 Over the course of several months, Mr. Dugan accessed
14 over a thousand images of child pornography using the dark
15 web, including sadistic and masochistic brutal images. It
16 does not appear from the record that he intentionally saved
17 the images to the hard drive, but I don't know that for
18 sure. And there's no evidence that he distributed the
19 images to anyone else.

20 Several of the enhancements as I mentioned as we went
21 through them have not kept pace with technological
22 advancement. The U.S. Sentencing Commission found in 2019
23 that over 95 percent of non-production child pornography
24 offenders received enhancements for use of the computer and
25 for the age of the victims. Given the evolution of

1 technology today, it's hard to imagine how the instant crime
2 can be committed without the use of the computer.

3 I'm old enough to remember when the principal
4 purveyor -- and I mean this respectfully and not the way
5 it's going to come out -- was the Postal Service. The
6 postal inspectors would put an ad in other newspapers and
7 people that were interested in that sort of thing wrote in.
8 And then they got the child pornography and then they got
9 arrested. It was sort of like the bizarre To Catch a
10 Predator stuff that we see every day now.

11 The purpose of the enhancements, in my view, is to
12 target more serious and culpable offenders, but today some
13 of those enhancements that I've discussed apply in most
14 cases and in response most courts, including this one, have
15 increasingly applied downward variances.

16 Mr. Dugan is 55 years old, no criminal history. He's
17 been diagnosed with hypertension, high cholesterol and
18 arthritis. He's prediabetic. He and his wife have been
19 married for 30 years and they have one child together. The
20 defendant has approximately 20 years of experience as a
21 sales manager. According to his most recent employer,
22 Mr. Dugan's a tireless worker and performed outstanding
23 work. Additionally, Mr. Dugan cared for both of his parents
24 when they became sick and has been described as a good
25 father by his wife and son.

1 This offense is serious. By paying for access to
2 images of child pornography or by accessing the dark web,
3 Mr. Dugan supported, just by doing it, the creation and
4 distribution of images depicting the sexual abuse of
5 children driving up demand for new images, rewarding those
6 who create them.

7 I disagree with the argument that his conduct must be
8 punished more severely because he's more likely to
9 physically abuse a child. I have looked at the arguments
10 and the articles written on that and I don't find the
11 evidence such as it is persuasive at all. That's not to say
12 that the crimes are mutually exclusive. They certainly
13 aren't, but the direct connection between this crime and
14 pedophilia is not -- and criminal pedophilia is not a matter
15 of scientific certainty.

16 So I think this reflects the seriousness of the
17 offense, promotes respect for the law and provides just
18 punishment.

19 The harshness of the sentence for accessing
20 computer-based child pornography aims at deterring others
21 from similar conduct. I find that this sentence, despite
22 being significantly below what's recommended by the
23 guidelines, will provide adequate deterrence. It will
24 protect the public from further crimes of this defendant.

25 Mr. Dugan's already been punished and will continue to

1 be punished by a strong social stigma in addition to his
2 prison sentence. Incarceration plus societal punishment I
3 believe will be adequate to deter Mr. Dugan from
4 re-offending.

5 Finally, I believe Mr. Dugan's participation in any
6 mental health or other treatment programs by the Bureau of
7 Prisons is advisable and will aid in his rehabilitation.
8 I'd ask that the probation officer also consider counseling
9 directed toward his conduct during his five years of
10 supervised release.

11 Are you in a position to go ahead and pay the \$5,100
12 now?

13 MR. SCHLES: Not literally as we speak, but
14 promptly, Your Honor.

15 THE COURT: Well, let me just make them due
16 immediately and see that they're taken of. There's no point
17 in waiting 90 days for that.

18 MS. WHITE: Your Honor, if I may interject.

19 I believe that the clerk's office needs an order, you
20 ordering the defendant to pay both the assessment and to pay
21 the restitution in a trust capacity, and further ordering
22 that they be allowed to accept it. So we would ask that
23 that take place either now or at some point during this
24 proceeding.

25 THE COURT: Well, I'm going to ask that the

1 special assessment be paid as in the normal course; that is,
2 it's due immediately.

3 MS. WHITE: Thank you.

4 THE COURT: And he's in jail. I can't really do
5 much else to him except order him to do it.

6 With regard to the restitution, I will enter a separate
7 order directing that the clerk's office hold -- how much
8 money?

9 MR. SCHLES: Well --

10 THE COURT: \$22,000?

11 MR. SCHLES: We said 22 earlier, but that included
12 the \$5,000, so I guess it would be 17.

13 MS. WHITE: That's correct, Your Honor, 17,000 for
14 restitution.

15 THE COURT: I will enter an order directing the
16 clerk's office to hold \$17,000 in trust pending the Court's
17 determination of the proper amount of restitution in this
18 case and after the -- that determination to pay the money
19 according to law.

20 MS. WHITE: Thank you, Your Honor.

21 THE COURT: Does that work?

22 MR. SCHLES: Yes, Your Honor.

23 THE COURT: Mr. Dugan, the only thing you didn't
24 say in your allocution now was to express any sympathy
25 whatsoever for those young children and that disturbs me. I

1 don't think you have recognized how awful this problem is
2 for the families and the people that are impacted by this
3 kind of criminal behavior.

4 MR. SCHLES: Your Honor, if I may -- if I may
5 please interject.

6 THE COURT: Yes.

7 MR. SCHLES: I believe that was the very first
8 thing that Mr. Dugan said was that he expressed sympathy
9 for everyone involved. He may not have used the term
10 victims, but I believe that is what he meant to convey to
11 the Court.

12 THE COURT: I heard him say everyone involved.

13 In any event, I didn't take it as a -- well, I've
14 already imposed the sentence based on what I thought and it
15 didn't have much to do with that. I'd already pretty much
16 made up my mind to that sentence before I walked in here. I
17 always listen to allocution and the arguments of counsel
18 before I finally decide on a sentence, but if I didn't do a
19 little work beforehand I wouldn't be doing my job.

20 What I'm telling you is that people suffer for the rest
21 of their lives when they're brutalized to make these
22 pictures. It's a horrible crime. Let me just give you a
23 personal example.

24 I intellectually could relate to the idea of how
25 horrible it is, but it wasn't until I was forced in a case

1 to look at the pictures that I saw how horrible -- I can't
2 find a stronger word -- that situation is. As a consequence
3 you'll catch me not looking unless I'm required to do by the
4 circumstances of the case.

5 In any event, I don't want you and I don't want your
6 family -- and I don't think they will -- you're well aware
7 of what your wife thinks of this. You knew your life was
8 over because of this. And the social opprobrium that you
9 receive is justified.

10 Now, having said all of that, which is true, you
11 deserve every bit of punishment you're getting. Having said
12 that, you're going to do that and then you're going to have
13 a life to live. And you're going to have a family whether
14 they're -- whether you're married or you're not married.
15 You're still going to have a family and you're going to have
16 a life in society to live.

17 Everything about your prior life indicates to me that
18 you can return to being a good citizen of this community,
19 that you can avoid any further problem with matters of this
20 sort. I think that with this aberrant flaw, other than
21 that, I think you're a very good man. There's nothing that
22 convinces me otherwise. So I want you to get out of prison.
23 I want you to get through your supervised release. And I
24 want you to make a good life for yourself.

25 You may feel like you're getting older, but I can

1 assure you from my vantage point you're a young man and
2 you've got a lot of life ahead of you. And I hope that
3 you'll use it as you suggest for the benefit of others,
4 particularly your wife -- or your ex-wife -- and your child.
5 You owe them every bit of your energy to make their life
6 good from here on out.

7 If you said before it's not about you in the past,
8 it's really not about you now. It's about making up to them
9 the horrible pain that you've inflicted on them. I'm not
10 trying to pick on you. I'm just telling you you can do it.
11 You have the ability to do it. And I think -- I think you
12 will.

13 Good luck to you.

14 THE DEFENDANT: Thank you.

15 Thank you, Your Honor.

16 I would apologize for my poor choice of words. I was
17 just struggling to get them out and I wanted you to know
18 that sympathy was directed towards them. And I do know --
19 and I appreciate -- I've heard from other cases that you've
20 been -- that you presided over of your kindness and your
21 determination to see people do better and I truly appreciate
22 that.

23 THE COURT: Well, I want you to. The whole
24 criminal justice system wasn't set up to be mean. It was
25 set up to protect society and that's what we're about. And

1 you can be a part of that. You can be a part of the
2 solution, I think.

3 I can't help but look back at your family and not feel
4 their pain. I have families coming in here every day and
5 that's the -- it's the hardest part.

6 Now, I'll share something with the lawyers that really
7 doesn't impact on you, but I hate it when defendants bring
8 their little kids here. I really hate that. It doesn't
9 help them a bit and it doesn't help me a bit. I don't -- I
10 think that's pain that doesn't need to be inflicted on
11 children, but be that as it may.

12 I take it there's no issue with regard to confinement
13 awaiting sentencing?

14 MR. SCHLES: Yes, Your Honor.

15 Mr. Dugan would ask the Court to recommend to the
16 Bureau of Prisons that he be confined at the Bureau of
17 Prisons facility in Morgantown. It has the programming
18 that he needs and it would be the most convenient for his
19 family.

20 THE COURT: I honestly don't know what the Bureau
21 of Prisons is doing now with sex offenders. I want
22 Mr. Dugan to go somewhere where he's safe. I'll make that
23 recommendation with the understanding that they should
24 substitute their judgment if they believe there's a more
25 appropriate place to assure his safety.

1 MR. SCHLES: Thank you, Your Honor.

2 THE COURT: Anything further?

3 MS. WHITE: No, Your Honor.

4 Thank you.

5 MR. SCHLES: Your Honor, I believe you need to
6 advise him of his appeal rights.

7 THE COURT: You know, how often do I forget that?
8 Too often.

9 Mr. Dugan, you have a right to appeal this Court's
10 sentence. If you want to do that, you must file a written
11 notice of appeal within 14 days of the entry of the order of
12 sentence and conviction in your case, which is going to be
13 entered right away, not after the restitution.

14 If you don't file that notice, you won't be able to
15 appeal.

16 Do you understand?

17 THE DEFENDANT: Yes, sir, I do.

18 THE COURT: If you do file the notice and I find
19 you don't have sufficient funds to procure documents or
20 transcripts or to hire a lawyer for your appeal those costs
21 will be borne by the United States.

22 Do you understand?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Anything further to come before the
25 Court?

1 MS. WHITE: No, Your Honor.

2 Thank you.

3 MR. SCHLES: No, Your Honor.

4 THE COURT: Court's in recess until 1:30.

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7 (Proceedings concluded at 11:08 a.m., October 27, 2022.)

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1 CERTIFICATION:

2 I, Kimberly Kaufman, Official Court Reporter, certify
3 that the foregoing is a correct transcript from the record
4 of proceedings in the matter of United States of America,
5 Plaintiff v. Raymond Dugan, Defendant, Criminal Action No.
6 2:21-cr-00127, as reported on October 27, 2022.

7
8 s/Kimberly Kaufman, RMR, CRR, CRC

January 15, 2023

9 Kimberly Kaufman, RMR, CRR, CRC
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11

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13 CERTIFICATION:

14 I, Kimberly Kaufman, Official Court Reporter, certify
15 that the foregoing is a correct redacted transcript from the
16 record of proceedings in the matter of United States of
17 America, Plaintiff v. Raymond Dugan, Defendant, Criminal
18 Action No. 2:21-cr-00127, as reported on October 27, 2022.

19
20 s/Kimberly Kaufman, RMR, CRR, CRC

March 2, 2023

21 Kimberly Kaufman, RMR, CRR, CRC

DATE
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